Ngeow Voon Yean v Sungei Wang Plaza Sdn Bhd & Anor

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W–04–3 OF 1998

MOHD NOOR AHMAD, RICHARD MALANJUM AND HASHIM YUSOFF JJCA

20 NOVEMBER 2003

Civil Procedure — Appeal — Jurisdiction — Findings of fact — Review of findings of fact — Whether obvious error in finding of fact by trial court — Whether appellate tribunal entitle to review and overturn such finding of fact

Labour Law — Employment — Termination of employment — Dismissal — Domestic inquiry — Inquiry held by parent company of employers — Whether failure of employers to hold domestic inquiry fatal — Whether dismissal void

Labour Law — Employment — Termination of employment — Dismissal — Obedience of orders of superior — Whether a defence to an illegal act — Whether employee had any reason to doubt legality of act

The appellant was employed by the respondent company. Rising up through the ranks, he went on to become its general manager. Throughout his career with the respondent the appellant's superior was one Simon Chong. An inquiry was held by the employer company's parent company in relation to two allegations of gross negligence and misconduct against the appellant in the discharge of his duties. The appellant had endorsed, on two deeds of assignment in favour of two banks, a statement that the whole of the purchase price had been paid, when in fact it had not. The appellant was found guilty on both the allegations and dismissed. The appellant made a representation to the Industrial Court. The main thrust of the appellant's case was that he was merely carrying out the orders of Simon Chong, who was at that time the executive director of the respondent. The appellant also emphasized that no domestic enquiry had in fact been held by his employer, only by the parent company. The Industrial Court accepted the explanations and reasons given by the appellant and took into account the undue influence exerted on the appellant by Simon Chong. The Industrial Court concluded that the dismissal of the appellant was without just cause or excuse and the appellant was awarded back-wages by way of compensation in lieu of reinstatement ('the award'). The respondent applied to quash the award. In granting the relief prayed for, the trial judge found the Industrial Court had committed serious errors of law which went to its jurisdiction, principally on the basis that 'merely carrying out a superior's orders was not a defence if the orders carried out was to do something illegal or wrongful'. The Industrial Court thus erred in concluding that the appellant had a complete defence against the allegations. The appellant appealed, arguing that the High Court erred in interfering with the findings of the Industrial Court when it was only carrying a reviewing jurisdiction.

Held, dismissing the appeal:

(1) It was not an absolute rule that a higher adjudicating body had no power to correct any obvious erroneous finding of fact by an inferior tribunal. Where a finding is so 'perverse and so devoid of plausible justification that no reasonable body of persons could have reached it, such a decision … was liable to be quashed for jurisdictional error.' Of course, there was a limitation to such power, eg where a trial judge, before whom an application is made for certiorari, inquires into and disturbs finding of facts based on the credibility of witnesses (see paras 26–27); *Malayan Banking Bhd v Association of Bank Officers, Peninsula Malaysia & Anor* [1988] 3 MLJ 240 followed and *Quah Swee Khoon v Sime Darby Bhd* [2000] 2 MLJ 600 referred.

(2) Generally, under employment law, an employee is not entitled to disobey the order of his superior. Such a precept is obvious since to allow disobedience of the order of a superior would bring a chaotic situation to any organization in terms of discipline, performance and industrial peace. Thus, obedience is expected of an employee even where he is in doubt as to the legality or reasonableness of an order by a superior. But if it is obvious to an employee that an order given is manifestly wrong and he is very conscious of such fact, then the general rule should not apply. In such a situation, the fear of dismissal should arise in the mind of the employee for, if such an event happens, his rights as an employee are assured. To extend the rule to mean that an employee is expected to follow any order of a superior even knowing the illegal nature of such order could also lead to a chaotic situation in any organization (see paras 18–19, 22); *Pan Global Textiles Bhd Pulau Pinang v Ang Beng Teik* [2002] 2 MLJ 27 distinguished.

(3) Here, the Industrial Court did not find that the appellant was in any doubt as to the legality of the orders. In view of the reasons given by the appellant for obeying the orders, he cannot rely on the general rule as an excuse for what he did. The finding of the Industrial Court, that had the appellant refused to comply with the instructions, this would have been an 'open defiance of authority and insubordination that could jeopardize his position in the company', was not in tandem with the stand of the appellant in that it was not out of fear of losing his job that he endorsed the deeds. It was because of the instructions and assurances given that the money would be collected. The appellant knew the instructions were wrong but the interests of the respondent was never a priority in the mind of the appellant (see paras 20–21, 28–29).

(4) The issue of the alleged undue influence exerted upon the appellant by Simon Chong was not a part of the pleaded case of the appellant. Neither was the evidence directed to that point. It was a conclusion of the Industrial Court, arrived at without much regard to the pleadings and the evidence adduced. The trial judge was therefore correct in

reviewing the erroneous findings of the Industrial Court. It was not an exercise involving the assessment of the credibility of any witness (see paras 30–31); *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 referred.

(5) Since the failure to hold an enquiry prior to the dismissal of an employee may not be fatal, a defect or even the absence of a domestic enquiry was fatal thereby making dismissal of an employee bad. It was accepted that no enquiry was held by the actual employer of the appellant, only by the parent company. However, the crucial facts were not disputed. The determining issue on the legality of his dismissal was therefore very much a question of law and had been dealt with by the Industrial Court and the High Court. A domestic enquiry would not have played a pivotal role on the issue. The fact that the domestic enquiry was flawed or that it was held by the parent company instead of by the respondent was not fatal to the decision to dismiss the appellant (see paras 35–36); *KC Mathews v Kumpulan Guthrie Sdn Bhd* [1981] 2 MLJ 320 and *Dreamland Corporation (M) Sdn Bhd v Choong Chin Sooi & Anor* [1988] 1 MLJ 111 followed.

[**Bahasa Malaysia summary**

Perayu telah diambil bekerja oleh syarikat responden. Setelah dinaikkan pangkat beberapa kali, beliau akhirnya menjadi pengurus besarnya. Sepanjang karier beliau dengan responden, ketua perayu adalah Simon Chong. Satu siasatan telah diadakan oleh ibu syarikat kepada syarikat majikan berkaitan dua pengataan tentang kecuaian melampau dan salah laku terhadap perayu dalam pelaksanaan tugasannya. Perayu telah mengindorskan, di atas dua surat ikatan penyerah akan bagi pihak dua bank, satu penyataan bahawa keseluruhan harga belian telah dibayar, walhal tidak begitu. Perayu didapati bersalah atas kedua-dua pengataan dan dipecat. Perayu membuat satu representasi kepada Mahkamah Perusahaan. Teras utama kes perayu adalah bahawa beliau hanya melaksanakan arahan-arahan Simon Chong, yang pada masa itu pengarah eksekutif responden. Perayu juga menegaskan bahawa tiada siasatan domestik diadakan oleh majikannya, hanya oleh ibu syarikat. Mahkamah Perusahaan telah menerima penjelasan dan alasan yang diberikan oleh perayu dan mengambilkira pengaruh yang tidak wajar digunakan ke atas perayu oleh Simon Chong. Mahkamah Perusahaan membuat kesimpulan bahawa pemecatan perayu adalah tanpa sebab atau alas an yang adil dan perayu diawardkan gaji tunggakan melalui pampasan menggantikan pengembalian semula jawatan ('award tersebut'). Responden telah memohon untuk membatalkan award tersebut. Dalam membenarkan relief yang dipohon, hakim perbicaraan mendapati Mahkamah Perusahaan telah melakukan kesilapan serius di sisi undang-undang terhadap penghakimannya, terutamanya atas dasar bahawa 'merely carrying out a superior's orders was not a defence if the orders carried out was to do something illegal or wrongful'. Mahkamah Perusahaan oleh itu telah tersilap dalam membuat keputusan bahawa perayu mempunyai pembelaan terhadap pengataan-pengataan tersebut. Perayu telah merayu,

menghujahkan bahawa Mahkamah Tinggi telah tersilap kerana telah campur tangan dengan penemuan-penemuan Mahkamah Perusahaan apabila ia hanya menjalankan satu kajian semula bidang kuasa.

Diputuskan, menolak rayuan tersebut:

(1) Ia bukan rukun yang mutlak di mana satu badan kehakiman yang lebih tinggi tidak mempunyai kuasa untuk membetulkan apa-apa penemuan fakta yang nyata salah oleh tribunal bawahan. Di mana satu penemuan adalah 'perverse and so devoid of plausible justification that no reasonable body of persons could have reached it, such a decision … was liable to be quashed for jurisdictional error.' Semamangnya terdapat had kepada kuasa sedemikian, contohnya di mana seorang hakim perbicaraan, dihadapan mana satu permohonan dibuat untuk certiorari, siasatan-siasatan ke dalam dan mengganggu penemuan-penemuan fakta berdasarkan kebolehpercayaan saksi-saksi (lihat perenggan-perenggan 26–27); *Malayan Banking Bhd v Association of Bank Officers, Peninsular Malaysia & Anor* [1988] 3 MLJ 240 diikut dan *Quah Swee Khoon v Sime Darby Bhd* [2000] 2 MLJ 600 dirujuk.

(2) Pada amnya di bawah undang-undang pekerjaan seorang pekerja tidak berhak untuk tidak mematuhi arahan ketuanya. Kata-kata nasihat tersebut amat jelas kerana untuk membenarkan ketidakpatuhan arahan seorang ketua akan membawa kepasa tu keadaan yang huru hara dalam mana-mana organisasi berkaitan dengan tatatertib, prestasi dan keamanan perusahaan. Oleh itu pematuhan diharapkan dari seorang pekerja walaupun beliau meragui kesahan dan kemunasabahan arahan ketua tersebut. Tetapi jika ia jelas kepada pekerja tersebut bahawa satu arahan yang diberikan adalah salah dan beliau sedar tentang hakikat tersebut, maka rukun am tidak patut terpakai. Dalam keadaan sedemikian, kebimbangan berlakunya pemecatan akan timbul dalam fikiran pekerja tersebut kerana, jika kejadian tersebut berlaku, hak beliau sebagai pekerja terjamin. Untuk meluaskan maksud rukun tersebut akan bermakna bahawa seorang pekerja adalah diharapkan mengikut apa-apa arahan seorang ketua walaupun mengetahui arahan tersebut bersifat menyalahi undang-undang yang juga boleh membawa kepada keadaan huru hara dalam mana-mana organisasi (lihat perenggan-perenggan 18–19, 22); *Pan Global Textiles Bhd Pulau Pinang v Ang Beng Teik* [2002] 2 MLJ 27 dibeza.

(3) Di sini, Mahkamah Perusahaan tidak mendapati perayu meragui tentang kesahihan arahan-arahan tersebut. Berdasarkan alas an-alasan yang diberikan oleh perayu untuk mematuhi arahan-arahan tersebut, beliau tidak boleh bergantung kepada rukun am sebagai alas an untuk apa yang telah beliau lakukan. Penemuan Mahkamah Perusahaan, dimana sekiranya perayu enggan mematuhi arahan-arahan tersebut, ia akan menjadi satu 'open defiance of authority and insubordination that could jeopardize his position in the Company', tidak selari dengan pendirian perayu di mana oleh sebab bimbang kehilangan pekerjaannya

yang menyebabkan beliau mengindorskan suratikatan-suratikatan tersebut. Ia adalah kerana arahan-arahan dan jaminan yang diberikan bahawa wang tersebut akan dikutip. Perayu mengetahui arahan-arahan tersebut adalah salah tetapi kepentingan responden bukan satu keutamaan dalam pemikiran perayu (lihat perenggan-perenggan 20–21, 28–29).

(4) Persoalan berhubung pengaruh tidak wajar yang digunakan ke atas perayu oleh Simon Chong bukan sebahagian daripada kes yang diplidkan oleh perayu. Tiada juga keterangan yang dikemukakan berhubung perkara ini. Ia adalah keputusan Mahkamah Perusahaan, yang tidak banyak memberi perhatian kepada pliding dan keterangan yang dikemukakan. Hakim perbicaraan oleh itu adalah betul dalam mengkaji semula penemuan-penemuan salah Mahkamah Perusahaan. Ia bukan satu pelaksanaan yang melibatkan penilaian kebolehpercayaan mana-aman sakasi (lihat perenggan-perenggan 30–31); *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 dirujuk.

(5) Memandangkan kegagalan untuk mengadakan siasatan sebelum pemecatan seorang pekerja mungkin tidak memudaratkan, satu kecacatan atau ketiadaan satu siasatan domestik adalah memudaratkan di mana membuat pemecatan pekerja tersebut tidak sah. Ia diterima bahawa tiada siasatan telah diadakan oleh majikan sebenar perayu, hanya oleh ibu syarikat. Namun begitu, fakta-fakta penting tidak dipertikaikan. Persoalan yang menentukan kesahihan pemecatan beliau adalah persoalan undang-undang dan telah dibicarakan oleh Mahkamah Persekutuan dan Mahkamah Tinggi. Satu siasatan domestik tidak akan memainkan peranan penting dalam persoalan ini. Hakikat bahawa siasatan domestik adalah salah atau bahawa ia diadakan oleh ibu syarikat dan bukan oleh responden tidak memudaratkan terhadap keputusan untuk memecat perayu (lihat perenggan-perenggan 35–36); *KC Mathews v Kumpulan Guthrie Sdn Bhd* [1981] 2 MLJ 320 dan *Dreamland Corporation (M) Sdn Bhd v Choong Chin Sooi & Anor* [1988] 1 MLJ 111 diikut.]

Notes

For cases on appeal on jurisdiction, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) para 881.

For cases on termination of employment, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1070–1140.

Cases referred to

Dreamland Corporation (M) Sdn Bhd v Choong Chin Sooi & Anor [1988] 1 MLJ 111 (folld)

KC Mathews v Kumpulan Guthrie Sdn Bhd [1981] 2 MLJ 320 (folld)

Malayan Banking Bhd v Association of Bank Officers, Peninsular Malaysia & Anor [1988] 3 MLJ 240 (folld)

Pan Global Textiles Bhd Pulau Pinang v Ang Beng Teik [2002] 2 MLJ 27 (distd)

Quah Swee Khoon v Sime Darby Bhd [2000] 2 MLJ 600 (refd)

A *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 (refd)
State Bank of India v RK Jain AIR 1972 SC 136 (refd)

Legislation referred to

B Industrial Relations Act 1967 s 20(1)

Appeal from: Originating Motion No Rl–25–97 of 1993 (High Court, Kuala Lumpur)

Dato' C Das (KS Wang with him) (Wang Kuo Shing & Co) for the appellant.
C *Vijayan Venugopal (Raymond Low with him) (Shearn Delamore & Co) for the respondent.*

Richard Malanjum JCA (delivering judgment of the court):

D INTRODUCTION

[1] This is an appeal against the decision of the High Court made on 29December 1997 granting the order of certiorari to the respondent thereby quashing the award of the Industrial Court given to the appellant on 16 June 1993.

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[2] Briefly, it was the finding of the Industrial Court that the dismissal of the appellant as the general manager of the respondent on 12 February 1988 was without just cause in that the dismissal was 'an injustice' and that the domestic inquiry held to consider the charges against the appellant was biased. The appellant was therefore awarded backwages by way of compensation in
F lieu of reinstatement vide Award No 179 of 1993.

[3] In quashing the award, the High Court came to the conclusion that it was perverse and irrational. Indeed, the learned judge was of the view that the crucial findings of the Industrial Court were clearly unreasonable and irrational in that no reasonable tribunal in similar circumstances could have
G come to such conclusions.

BACKGROUND FACTS

[4] It is not in dispute that the appellant began working for the respondent in 1977 when he was a management trainee. In 1980, he was appointed the
H operation manager. Subsequently, he was appointed the general manager for the respondent. Throughout his career with the respondent, the appellant had Mr Simon Chong as his superior.

[5] On 27 October 1987, the appellant was suspended by the respondent
I pending further inquiry on the allegations against him.

[6] On 24 December 1987, the appellant was informed that an inquiry would be held on 5 January 1988 in relation to two allegations against him,

namely, for his conduct in endorsing on the two deeds of assignment in favour of two banks. The two allegations are as follows:

(a) Your endorsement in a deed of assignment dated 20 December 1985 and executed by Sa-Mula Jadi Sdn Bhd in favour of Arab-Malaysian Finance Berhad in respect of SG-001, In the endorsement you stated that the whole of the purchase price of RM2,722,500 payable by Sa-Mula Jadi had been paid in full on that date when in fact this was not the case.

(b) Your endorsement in a deed of assignment dated 25 April 1986 and executed by Sa-Mula Jadi Sdn Bhd in favour of Asia Commercial Finance (M) Bhd in relation to Basement 001. In the endorsement you stated that the whole of the purchase price of RM3,800,000 payable by Sa-Mula Jadi had been paid in full on that date when in fact this was not the case.

[7] The result of the inquiry was that the appellant was found guilty on both the allegations for gross negligence and misconduct in the discharge of his duties as the general manager of the respondent. On that basis, the appellant was dismissed.

[8] Incidentally, despite learned counsel for the appellant before us submitting that the High Court made a wrong assumption that the endorsement on the two deeds were false, we do not think there was any dispute that the balances of the purchase prices were not settled and that the endorsement was false.

[9] Arising therefrom, the appellant made a representation under s 20(1) of the Industrial Relations Act 1967.

BEFORE THE INDUSTRIAL COURT

[10] The main thrust of the appellant's case before the Industrial Court was that he acted as he did in endorsing on the two deeds because he was merely carrying out the orders of his superior, Mr Simon Chong who was then the executive director of the respondent.

[11] The Industrial Court accepted the explanations and reasons given by the appellant for endorsing on the two deeds and held that they constituted as reasonable, valid and 'successful defence of charges of negligence and misconduct'. And the conclusion was that the dismissal of the appellant was 'glaring injustice and a dismissal without just cause or excuse'.

[12] Other factors taken into account by the Industrial Court were that there was undue influence upon the appellant by his superior and that the police did not take any action against the appellant although there was a report lodged.

IN THE HIGH COURT

[13] In making the application for an order of certiorari in the High Court, the respondent sought to quash the award on the grounds of the same being perverse, irrational, unreasonable and was otherwise an act which went beyond the jurisdiction of the court.

[14] And in granting the relief prayed for, the learned judge found the Industrial Court to have committed serious errors of law which went to its jurisdiction principally on the basis that 'merely carrying out superior orders is not a defence if the orders carried out is to do something illegal or wrongful' and that where it can be shown that 'the drawing of the factual inference from established facts is perverse and so devoid of plausible justification that no reasonable body of persons could have reached it, such decision by the decision maker is liable to be quashed for jurisdictional error'. He also found that the Industrial Court took into account irrelevant matters and failed to consider relevant matters in coming to its decision.

[15] Accordingly, the learned judge ruled that it was erroneous for the Industrial Court to conclude that the appellant was just carrying out the order of his superior and thus had a complete defence for the allegations of negligence and gross misconduct. And his reasons for coming to such conclusion are as follows, inter alia:

(i) that there was no evidence to support that the appellant was put under any pressure or was under the effective control and dominant influence of Mr Simon Chong at the material time;

(ii) that based on the admission by the appellant he entered the endorsement on the two deeds not out of fear of losing his job;

(iii) that there was no evidence of force or coercion applied in order to compel the appellant to enter the endorsement;

(iv) that the appellant knew that the direction was wrong but nevertheless did it out of love for his superior;

(v) that the issue of undue influence was never pleaded yet taken into account thus resulting in taking irrelevant matters into consideration; and

(vi) that the non-prosecution of the appellant had no bearing to his culpability for what he did as an employee of the respondent since the sole issue is whether his dismissal was with just cause or excuse.

THE APPEAL

[16] Before us, it was submitted for the appellant:

(a) that the High Court erred in interfering with the findings of the Industrial Court when it was only carrying a reviewing jurisdiction. There was therefore lack of focus on the error of law by the Industrial Court and the High Court assumed an appellate jurisdiction instead;

(b) that the High Court misunderstood the law regarding the duty upon an employee to first obey orders of a superior and protest later;

(c) that the domestic inquiry was flawed, biased and a sham yet the High Court failed to consider that the decision to dismiss the appellant was therefore tainted with bad faith;

(d) that the charges against the appellant was by the parent company and not by the respondent; and

(e) that the complaint against the appellant was for negligence yet he was dismissed for negligence and misconduct. The former has the element of carelessness while the latter involves intentional wrong doing.

[17] In rebuttal, learned counsel for the respondent supported the finding of the learned judge that merely carrying an order of a superior is not a good defence which an employee can rely upon. And he also submitted that the Industrial Court was wrong in taking into account the issues of undue influence when it was not pleaded and the non-prosecution of the appellant of any criminal charge.

FINDINGS

Order of superior in an employer-employee relationship

[18] Generally, under employment law, an employee is not entitled to disobey the order of his superior. Such precept is obvious since to allow disobedience of an order of a superior will bring chaotic situation to any organization in term of discipline, performance as well as industrial peace. That was made clear in the case of *Pan Global Textiles Bhd Pulau Pinang v Ang Beng Teik* [2002] 2 MLJ 27 where his Lordship Ahmad Fairuz FCJ (as he then was) at p 39 reproduced this relevant passage:

> BR Ghaiye, in his book *Misconduct in Employment* (2nd Ed), at p 306, said:
>
> Whether an employee is required to obey orders if it is doubtful whether the orders are legal or not it is generally held that the proper course for an employee is to obey the orders when it is given and protest about its illegality in separate proceedings, The distinction is made on the basis that if it is allowed to a worker to judge about the legality of every order and to disobey it, if he thinks it is not legal, it would be impossible for the management to get the work done. (*Rashtriya Girni Kamgar Sangh v Genda Lai Mills Co* [1951] ICR 603 (1C); *Kalyanbhai Millji Bhai v New National Mills Co Ltd, Ahmedabad* [1957] ICR 1052 (1C); *BM Kastura v Swadeshi Mills Co Ltd* [1973] ICR (1C)). If an employee takes upon himself to disobey an order which he thinks not lawful or unreasonable, two courses are open to him. He can point out his difficulties, if any, to the superior and if the latter insists on the order being carried out, he can do the work and take up the matter through the union. If he disobeys he must take the risk, if the court finds that the order was lawful and reasonable. (*RMMS, Bombay v Phoenix Mills Ltd* [1958] ICR 154 (1C)). When a worker refused to comply with the instructions of his superiors and his defence was that he wanted to verify whether the order was approved by the Manager it amounted to insubordination and dismissal is justified. (*Cambodia Mills Ltd, Coimbatore v Industrial Tribunal, Madras* [1959] 11 LLJ 80 (MadHQ). The above principle also applies to transfer orders. If an employee tries to disobey apparently lawful order on the ground of illegality it would be difficult for the management to maintain discipline and industrial peace. It is the duty of the employee to first obey the order and then challenge it. (*Abdul Latif v New Prakash Transport Co (Pvt) Ltd* [1974] ICR 1 (1C)).

[19] From the short passage, it can be discerned that obedience is expected of an employee where he is in doubt of the legality or reasonableness of an order by a superior. But if it is obvious to an employee that an order given is manifestly wrong and he is very conscious of such fact, we are of the opinion that the general rule should not apply. In such a situation we do not think the issue of fear of dismissal should arise in the mind of the employee for if indeed such an event happens, his rights as an employee is assured.

[20] Reverting to the present case the Industrial Court did not find that the appellant was in doubt as to the legality of the order of Mr Simon Chong. Rather it was on the basis that the appellant was under:

(i) the 'effective control and dominant influence' of Simon Chong considering the daily association and interaction between them;

(ii) that he was bound by his terms of employment to obey any instruction of Simon Chong and hence he was therefore in no position legally and contractually to refuse to carry out any order given; and

(iii) that although he knew of the true position of the transactions at the material time he went on to endorse on the deeds based on the assurance given by his superior Mr Simon Chong.

[21] Accordingly, in view of the reasons of the appellant in obeying the order of Mr Simon Chong, we do not think he can rely as an excuse for what he did on the generally accepted rule of obedience expected of an employee.

[22] To extend the rule to mean that an employee is expected to follow any order of a superior even when knowing well of the illegal nature of such order could also lead to a chaotic situation in any organization.

[23] And further, there would be nothing to prevent an unscrupulous superior from making use of his subordinate to do unlawful actions well aware that the subordinate may have a good excuse.

[24] We are therefore in agreement with the conclusion of the learned High Court judge that obedience expected from an employee to orders of his superior is not without limit. And on this ground alone that the learned High Court judge was justified in granting the order sought for.

Interference of finding of fact by the High Court

[25] As indicated above, it was also the complaint of the appellant that the High Court judge interfered with the finding of fact by the Industrial Court and hence, he failed to observe the nature of the application before him.

[26] With respect, we do not think it is an absolute rule that the High Court or a higher adjudicating body is deprived of any power to correct any obvious erroneous finding of fact by an inferior tribunal. If a finding is, 'perverse and so devoid of plausible justification that no reasonable body of persons could have reached it, such decision by the decision maker is liable to be quashed for

jurisdictional error', per Abdoolcader SCJ in *Malayan Banking Bhd v Association of Bank Officers, Peninsular Malaysia & Anor* [1988] 3 MLJ 240 at p 207.

[27] Of course, there is limitation to such power as indicated in the case of *Quah Swee Khoon v Sime Darby Bhd* [2000] 2 MLJ 600 where this Court expressed a view that when a judge before whom an application is made for certiorari inquires into and disturbs finding of facts based on the credibility of witnesses, he is actually exercising appellate functions, hence contrary to the review nature of such application.

[28] In the present case, the Industrial Court came to a finding that had the appellant refused to comply with the instruction of Mr Simon Chong that would have been an 'open defiance of authority and insubordination that could jeopardize his position in the company'.

[29] However, that finding was not in tandem with the stand of the appellant in that it was not out of fear of losing his job that he endorsed on the deeds. It was because of the instruction given by Mr Simon Chong and that he knew the instruction was wrong but for the assurance that the money would be collected. Obviously, the interest of the respondent was never the priority in the mind of the appellant. The Industrial Court was therefore in error to come to such conclusion upon which the defence of superior order was then justified when there was no basis or that it was an erroneous ground.

[30] One other issue raised by the Industrial Court was on the issue of alleged undue influence exerted upon the appellant by Mr Simon Chong. It was not in dispute that such point was not part of the pleaded case of the appellant. And neither was the evidence directed to that point. It was solely the conclusion of the Industrial Court without much regard to the pleadings and the evidence adduced (see *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145).

[31] The learned High Court judge was therefore correct in reviewing the erroneous findings of the Industrial Court. Indeed, it was not an exercise involving assessment of credibility of any witness. There is therefore no merit in the contention of the appellant on this issue.

Domestic enquiry

[32] It was conceded by learned counsel for the respondent that the domestic enquiry held to consider the case of the appellant was flawed. But it was also submitted that such defect was not fatal to the case of the respondent.

[33] Learned counsel for the appellant emphasized that there was in fact no enquiry held by the actual employer of the appellant but only by the parent company.

[34] Having perused the authorities, we are in agreement with learned counsel for the respondent that defect or even absence of domestic enquiry should not be considered fatal thereby making dismissal of an employee bad.

In *KC Mathews v Kumpulan Guthrie Sdn Bhd* [1981] 2 MLJ 320, the Federal Court opined thus (per Raja Azlan Shah CJ (Malaya) (as he then was) at p 321):

> Secondly, he said that the dismissal was bad because there had been no enquiry. The learned trial judge in his judgment did not deal with the second point and it is not quite clear from the memorandum of appeal whether the appellant continued to rely on his complaint of breaches of natural justice. In our view, however, there is absolutely no point in this part of the submission. No enquiry needed to be called for in the circumstances of the case. There was evidence which the appellant could not and did not deny that in the course of his brief employment he had been told on several occasions of the unsatisfactory nature of his work, his lack of industry and initiative. His acceptance of a further period of probationary employment must be regarded as an acceptance of the condition that he had to prove his suitability for confirmed service. Unfortunately, his willingness was never translated into action. The appellant knew at all times how dissatisfied his employer was with him and he must have known, having regard to the terms of the letter of appointment, that he was running the risk of dismissal. All he had to do was to produce the work required of him. He never did. The enquiry that he now required would have served no useful purpose.

[35] And in *Dreamland Corporation (M) Sdn Bhd v Choong Chin Sooi & Anor* [1988] 1 MLJ 111, his Lordship Wan Sulaiman SCJ in delivering the judgment briefly examined the positions in some common law countries which invariably held that failure to hold enquiry before dismissal of an employee was not fatal (see also *State Bank of India v RK Jain* AIR 1972 SC 136).

[36] In the present case, the crucial facts were not disputed specifically that the appellant did endorse on the deeds knowing well the true position that the balance sums were yet to be paid by the buyer of the properties. The determining issue on the legality of his dismissal was therefore very much a question of law and that had been dealt with by the Industrial Court and the High Court. Hence, we do not think a domestic enquiry would have played any pivotal role on the issue. Accordingly, the fact that the domestic enquiry was flawed or that it was held by the parent company instead of by the respondent should not be ruled as fatal to the decision in dismissing the appellant.

Negligence and misconduct

[37] It was the contention of learned counsel for the appellant that the grounds for dismissing the appellant were unclear. In the minutes of the parent company, it was on the basis of negligence. But in the dismissal letter, the grounds were negligence and misconduct. And it was further submitted that the elements of these two differ in that the first involves carelessness while the other an intentional act.

[38] With respect, we do not think the foregoing contention is of any relevance in view of the main defence raised by the appellant, namely, obedience of superior order and the conclusions of the High Court and this court on the issue.

Conclusion

[39] For the above reasons, we dismiss this appeal by the appellant and affirm the decision of the High Court. Costs to the respondent to be taxed. Deposit to be paid to the respondent on account of taxed costs.

Appeal dismissed.

Reported by Sivapragasam Kumaran